HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.A.No.1129 of 2006
And
W.A.NO.2106 OF 2005
AND
W.P.NO.22740 OF 2005
AND
W.P.NO.22731 OF 2005

COMMON ORDER: (Per BPR.J.,)

Since all these matters involved a common question affecting the claims made *inter se,* they have been taken up together for disposal.

The Writ Appeal in S.R.No.119964 of 2005 is filed by a third party, affected by Judgment in W.P.No.11001 of 1991 dated 13.03.2001.

W.A.No.2106 of 2005 arises out of the interim orders granting suspension of the impugned orders dated 06.10.2005 and consequential orders dated 07.10.2005 by the learned Single Judge in W.P.M.P.No.29121 of 2005 pending the main writ petition in W.P.No.22740 of 2005 dated 25.10.2005.

Since the other connected cases are being heard involving the same question and *inter se* claims and at their request the main writ petition itself in W.P.No.22740 of 2005 is taken up for disposal.

In the other writ, the petitioner in W.P.No.22731 of 2005 also seeks to assail the self same impugned orders dated 06.10.2005 and 17.10.2005.

The brief resume of the facts of which the present dispute arises as the result of a writ petition initially filed by Sri M.Ramesh Reddy, appellant in W.P.No.11001 of 1991, who is the appellant in W.A.No.2106 of 2005 and the Respondent No.3 in the other two writ petitions Nos.22740 and 22731 of 2005.

In the said W.P.No.11001 of 1991 Sri M.Ramesh Reddy sought a writ of mandamus directing the respondents to implement the provision under Note 1 Rule 4 of A.P. Engineering Service Rules, 1966 inserted as per G.O.Ms.No.180, Irrigation (Ser.IV-2) Department, dated 29.04.1983 while making promotion to the post of Deputy Executive Engineers from the category of Assistant Executive Engineer by declaring the in action and failure of the respondents therein who are the authorities of the concern in implementation of the said Rules, so far by the respondents as illegal and arbitrary and contrary to the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short the Endowment Act) and Tirumala Tirupathi Devastanams Employees Service Rules, 1989 (for short TTD Service rules). The said writ petition was filed on 23.08.1991 and the counter affidavit of the respondents virtually supports the case of the petitioner. It was his case that having regard to the amendment brought in GO.Ms.No.180, Irrigation (Sr.IV-2) Department, dated 29.04.1983, a candidate who acquired a post graduate qualification, is entitled to be considered for promotion

over and above in preference. After hearing both sides, the learned single Judge of this Court disposed of the writ petition by taking into consideration of the said statement made by the TTD authorities in the counter affidavit. That as per the G.O.Ms.No.180, dated 29.4.1983 for implementation and to fix up the 9th vacancy, in every vacancy in a cycle of 24 points for promotion to the cadre of Deputy Executive Engineer shall be earmarked for the post graduate Junior Engineer and that the TTD authorities have accepted that they have not adopted the procedure envisaged in G.O.Ms.No.180 dated 29.04.1983 and therefore, directed the said authorities as and when the panel is prepared for promotion to the cadre of Deputy Executive Engineer, his case shall be considered, if he is qualified and eligible as per rules. It is relevant to note that in that writ petition, none of the other contesting parties herein are made parties.

Apparently following the said directions, the TTD authorities have issued proceedings in Roc.No.TL1/36091/2005, dated 06.10.2005. The seniority is revised and refixed in the cadre of Deputy Executive Engineer by placing him from his earlier place at S.No.4 to that of S.No.1 over and above the S.No.1 to 3 candidates who have been shown therein and thus S.No.1 to 3 who were shown in the existing seniority list was sought to be shown junior to him as 2, 3 and 4. Consequent to the said orders, the TTD authorities issued proceedings by Roc.No.TL1/21056/2005, dated 07.10.2005 promoting him viz. M.Ramesh Reddy to the post of Superintending Engineer

temporarily. Not it necessitates to refer to the existing and revised position in the following manner:

EXISTING	REVISED
1. Sri V.S.B.Koteswara Rao 2. Sri C.Chandrasekhar Reddy 3. G.ramachandra Reddy 4. Sri M.Ramesh Reddy	1. M.Ramesh Reddy 2. V.S.B.Koteswara Rao 3. Sri C.Chandrasekhar Reddy 4. Sri G.Ramachandra Reddy

Challenging the said proceedings one of the candidate viz. G.Ramachandra Reddy who was immediately placed above and who has been brought down to its S.No.4 filed W.P.No.22740 of 2005, *inter alia*, on the ground that the said G.O.Ms.No.180 dated 29.04.1983 has no application to the employees of the TTD, who are Governed by the special Rules framed in G.O.No.1350, Revenue (End), dated 2.8.1978 and G.O.Ms.No.1060 Revenue dated 24.10.1989 wherein no such preference has been given to any post graduate qualification and therefore, the question of disturbing the seniority as existing, is wholly unsustainable. It was pointed out therein, even though the said petitioner viz. G.Ramachandra Reddy and the other candidates Sri C.Chandrasekhar Reddy in W.P.No.22731 of 2005 have challenged the said orders in W.P.No.11001 of 1991 in W.A.No.1728 of 2001 and 575 of 2001 both of which were disposed of by common order by the Division Bench of this Court on 25.08.2005 on the ground that since no orders have been placed before the Court by the authorities in pursuance of such

decision, hence, they do not find any reason to interfere with the order under appeal and dismissed the same.

The learned single Judge of this Court has granted interim suspension of the both proceedings dated 6.10.2005 and 07.10.2005 as per the orders in W.P.M.P.No.29121 of 2005 dated 25.10.2005. Challenging the same the said M.Ramesh Reddy has filed W.A.No.2106 of 2005.

Similarly the other candidate viz Sri C.Chandrasekar Reddy who is also affected by the aforesaid orders passed by the TTD authorities filed another W.P.No.22731 of 2005 virtually in self same lines as that of W.P.No.22740 of 2005, *inter alia* contending that G.O.Ms.No.180 dated 29.04.1983 has no application to the TTD employees.

With this factual back ground in respect of which there being no serious dispute, especially about the proceedings as initiated by the respective parties, and after hearing the counsel from all sides including the learned standing counsel appearing on behalf of the TTD, the main question which arises for consideration is as to whether on the facts and circumstances of the case the amendment brought in G.O.Ms.No.180, dated 29.04.1983 is applicable to the employees of the TTD?

At this juncture, it is relevant to note that all these employees viz M.Ramesh Reddy, G.Ramachandra Reddy and Sri C.Chandrasekhar Reddy were initially appointed as Assistant Executive Engineers on 02.07.1984. When G.Ramachandra Reddy

was shown at S.No.7, C.Chandrasekhar Reddy was shown at S.No.4 and M.Ramesh Reddy was shown at S.No.9. All these three persons were promoted as Deputy Executive Engineers on 3.09.1992 on adhoc basis and subsequently as Executive Engineers on 17.05.2002 and placing of these persons respectively at S.No.4, 7 and 9 continues to be shown in the aforesaid promoted post. Whereas the appellant in W.A.Sr.No.119964 of 2005, namely Sri V.S.B.Koteshwara Rao was initially appointed as Junior Engineer (AEE) in Government of Andhra Pradesh. Service, in the year 1978 and later, his services were loaned to TTD on 12.11.1979 and absorbed with the TTC as per resolution dated 13.06.1984 reckoning his seniority in the category of AEE from 13.6.1984, and Government acceded to it, as per G.O.Ms.No.809 dated 15.7.1985. Accordingly, he was absorbed with TTC on 20.08.1985 taking last rank as on 13.06.1984. Later, he was promoted as Deputy Executive Engineer on 3.9.1992 and Executive Engineer on 23.10.2002. An attempt to repatriate failed. There is also no dispute to the effect that subsequently these candidates have acquired post graduate qualification. The main reliance which is sought to be placed on behalf of the one of the candidates viz M.Ramesh Reddy which has allowed to passing of the impugned order dated 6.10.2005 and 7.10.2005 is in respect of G.O.Ms.No.180, dated 29.04.1983. Therefore, it is necessary to refer to the same before taking up the other aspects. It is relevant to extract the said G.O.Ms.No.180, dated 29.04.1983, which reads as follows:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

PUBLIC SERVICES - State Services Andhra Pradesh Engineering Service – Promotion of Junior Engineers to the Category of Assistant Engineers – Extent to which a post graduate has to be given preference in the matter of promotion to the post of Assistant Engineers – Amendment to Special Rules – Issued.

IRRIGATION (Sec.IV-2) DEPARTMENT

G.O.Ms.No.180 Dated:29th April, 1983

Read the following:-

G.O.MS.NO.285, PWD, DATED 22.2.1967

O R D E R:

The following notification shall be published in the Andhra Pradesh Gazette:-

N O T I F I C A T I O N

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, and of all other powers hereunto enabling the Governor of Andhra Pradesh hereby makes the following amendments to the Special Rules for the Andhra Pradesh Engineering Service, issued in G.O.Ms.No.285, PWD, dated 22.2.1967.

A M E N D M E N T

In note (1) under Rules 4 of the said rules, the following shall be added, namely:-

"The extent to which a post graduate has to be given preference in the matter of promotion to the post of Assistant Engineer is as indicated below:-

9th vacancy in 9 vacancies intended for appointment of Junior Engineers and compressed Diploma Holders (DCEs) as Assistant Engineers shall however be earmarked for pos graduate Junior Engineers.

(BY ORDER AND IN THE NAME OF THE GOVERNOR

OF ANDHRA PRADESH)

M.NARAYANA RAO
JOINT SECRETARY TO GOVERNMENT

To
The Engineer-in-Chief
Andhra Pradesh, Hyderabad, A.P.

From the above, it is quite apparent that under the aforesaid G.O, the amendment was made to the special rules for Andhra Pradesh Engineering Service Rules issued in G.O.Ms.No.285 dated 22.2.1967 whereby the Rule 4 of the said rules is being added providing a special preference to a post graduate qualification. 9th vacancy in 9 vacancies intended for appointment of Junior Engineers shall be earmarked for such post graduate Junior Engineers. Thus it is quite apparent that this amendment is only in respect of the special rules under the A.P. Engineering Service Rules issued in G.O.Ms.No.285 PWD, dated 22.2.1967, which has no concern with TTD services.

There is no dispute to the fact that earlier the concerned rules applicable to such employees were framed under the name and style of TTD Office holders and Servants (Other than Hereditary Office Holders) Recruitment Rules 1978, which were issued in exercise of the power available to the Governor of Andhra Pradesh under Section 107 read with Sub-Section 5 of Section 31 and Section 88 of the A.P. Charitable and Hindu Religious Institutions and Endowment Act, 1966. These rules were issued in G.O.Ms.No.1350 Revenue (Endowment.III) Department, dated 02.08.1978, which were published in A.P. State

Gazette on 24.08.1978. There is no dispute that in these rules as amended various cadres have been contemplated for the promotion. However, admittedly there is no such preference or any preferencial treatment being provided for a candidate possessing post-graduate qualification. The earlier post of Junior Engineer to Assistant Engineer and from Assistant Engineer to Executive Engineer and from Executive Engineer to Superintending Engineer. Subsequently once again fresh rules have been framed under the name of TTD Service Rules, 1989 issued in G.O.Ms.No.1060, Revenue (Endowments-I), dated 24th October, 1989 in exercise of powers under Sections 35, 106 and 107 read with Section 153 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. These Rules were published in the A.P.Gazette on 26.10.1989.

Admittedly, even under these later Rules, there is no dispute that except a requirement of having satisfactory service of not less than five years as Assistant Executive Engineer there is no such preferencial treatment or qualification prescribed for any candidate holding a post graduate degree qualification in the matter of promotion to the post of Deputy Executive Engineer as evident from the annexure II to the said rules. These rules are special and made under the provisions of the special enactment, which are applicable to the employees of the institutions. Neither the rules framed in G.O.Ms.No.1350, dated 02.08.1978 nor in the G.O.Ms.No.1060, dated 24.10.1989 prescribed or provided for any such preferencial candidate possessing post graduate degree. The said G.O.Ms.No.180 dated 29.04.1983 was only in respect of

the other Engineering Services of the Government as contained in G.O.Ms.No.285 dated 22.02.1967 which have absolutely no application to any of these employees much less of the Engineering Services of the TTD. Even otherwise, at a time when the special rules have been framed and brought into force in G.O.Ms.No.1060 dated 24.10.1989, they were fully aware of such a situation in respect of other Engineering services belonging to the Government which are covered in G.O.Ms.No.18, dated 29.04.1983 and in spite of that no similar such provision has made or incorporated specifically given to a candidae possessing post graduate degree. This is a clear cut intentional omission. When special rules have sought to be made in respect of such employees in regard to the TTD on 24.10.1989 vide G.O.Ms.No. 1060 the authors could have borrowed similar such provisions, but they omitted to do so. Thus in the absence there of, it cannot be said that the provisions made in respect of some other Engineering services belonging to the Government can have any sort of application to the services under the TTD. Therefore, there is a clear cut disjunction in respect of operational area of the rules as applicable to the engineering services of the Government and that of the TTD. Both operate separately and govern, control and administer two difference fields. They cannot entrust into such overlapping nor one cannot make in road into the other. Even otherwise, it is relevant to note that Rule 4 of Tirumala Tirupathi Devasthanams Employees Rules, 1989 specifically reads in the following manner:

> *4. The Tirumala Tirupathi Devasthanams Employees shall be governed by the following rules and such of the orders*

and clarifications issued on these rules by Government of Andhra Pradesh in respect of the employees of State Government from time to time in so far as they are not inconsistent with the act and the Rules made thereunder:

(i) The Fundamental Rules and the Subsidiary Rules issued thereunder,

(ii) the Andhra Pradesh Leave Rules 1933;

(iii) The Andhra Pradesh Manual of Special Pay and Allowances including traveling Allowances Rules and the Subsidiary rules issued thereunder;

(iv) The Andhra Pradesh Pension code and the Andhra Pradesh Liberalized Pension Rules, 1961, A.P. Family Pension Rules 1964 and A.P. Revise Pension Rules, 1980;

(v) Andhra Pradesh Civil Services (Conduct) Rules, 1964;

(vi) Andhra Pradesh Civil Services (Classification Control and Appeal) Rules, 1963;

(Vii) Andhra Pradesh State and Subordinate Service Rules;

(viii) Andhra Pradesh Financial Code.

(ix) Any other executive instructions and Government orders that are issued from time to time by the Government in respect of their employees which are not in consistent with the Act and Rules made thereunder."

From the above, it amply shows that the employees of the said devasthanam shall be governed by only those rules which are mentioned therein and such of the orders issued by the Government of Andhra Pradesh from time to time so far as they are not inconsistent with the act and rules made thereunder. The rules which have been specifically mentioned rule do not include rules made in G.O.Ms.No.285 dated 22.2.1967 not the amendment made to it under G.O.Ms.No.180 dated 29.04.1983. Therefore, the question of following any of these rules or the amendment brought into the employees of the TTD does not arise. From the above, it

is amply makes it clear that it is only due to the confusion which has been brought in as a result of the orders obtained by the petitioner in W.P.No.11001 of 1991 seeking for implementation of the said Note I Rule 4 of the G.O.Ms.No.180, dated 29.04.1983, where this Court was mislead without proper assistance and clarification on behalf of the TTD in regard to the statutory applicability of the rules concerned. The parties likely to be affected are not impleaded and no opportunity was afforded to them. Therefore, the reliance as sought to be placed by the petitioner in the said W.P.No.11001 of 1991 simply passing his claim in pursuance of G.O.Ms.No.180 dated 29.04.1983 is wholly unsustainable and therefore, the impugned order dated 6.10.2005 and consequent promotions as ordered on 7.10.2005 cannot be sustained. Thus the entire impugned proceedings dated 06.10.2005 in refusing the seniority list by applying a rule, which has no application is wholly bad and illegal. In view of the aforesaid reasons, it only follows that the impugned order dated 06.10.2005 and also 07.10.2005 in refusing the seniority list and not giving effect to the promotion to the petitioner in W.P.No11001 of 1991 and who is respondent No.3 in W.P.No.22740 of 2005 and W.P.No.22731 of 2005 is liable to be set aside.

Consequently both the writ petitions viz W.P.No.22740 and 22731 of 2005 are allowed. The appeal in W.A.No.2106 of 2005 arise out of W.P.M.P.No.29121 of 2005 in W.P.No.22740 of 2005. It has been represented during the course of arguments that in pursuance of said interim directions the TTD authorities have been implemented by surpassing the promotion orders and later

promoting those in terms of the earlier seniority list. Hence, no further orders are necessary.

The Writ Appeal Sr.No.119964 of 2005 is accordingly allowed and the orders of the learned Single Judge in W.P.No.11001 of 1991 dated 13.03.2001 are set aside.

It shall open for the TTD authorities to proceed with the consideration of the case of all these employees in terms of the existing seniority list by considering their respective cases for promotion to which they would be entitled to in terms of the rules applicable in G.O.Ms.No.1060, dated 24.10.1989 alone. No costs

B.PRAKASH RAO,J

Dated: 10.10.2006

Dr.G.YETHIRAJULU,J

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